

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

JTRE MANHATTAN AVENUE LLC and)
JTRE 807 MANHATTAN AVENUE LLC,)

Plaintiffs,

v.

CAPITAL ONE, N.A.,

Defendant.

Case No. _____

DEFENDANT’S NOTICE OF REMOVAL

Please take notice that Defendant Capital One, N.A. (“Capital One”), pursuant to 28 U.S.C. §§ 1441 and 1446 and Local Civil Rule 81.1, is removing the above-captioned matter filed by Plaintiffs JTRE Manhattan Avenue LLC (“JTRE Manhattan”) and JTRE 807 Manhattan Avenue LLC (“JTRE 807”) (collectively, “Plaintiffs”) from the Supreme Court of New York County, New York, to the United States District Court for the Southern District of New York.

1. This case is pending in the Supreme Court of New York County, New York, and is therefore eligible for removal under 28 U.S.C. § 1441(a).

2. The United States District Court for the Southern District of New York embraces the place where the action is pending, and it is a proper venue under Section 33.8 of the Inline Branch Lease at issue.

3. This notice of removal is filed within 30 days after the receipt by Capital One of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.

4. This case is removable on the basis of this Court's diversity jurisdiction under 28 U.S.C. § 1332(a), because the citizenship of the parties is completely diverse and the amount in controversy exceeds \$75,000.

5. Upon information and belief, Jack Terzi is the sole member of JTRE Manhattan and JTRE 807. Mr. Terzi is an individual who, upon information and belief, resides and is domiciled in Monmouth County, New Jersey.¹ Therefore, Plaintiffs are New Jersey citizens.

6. Capital One is a national bank within the meaning of 28 U.S.C. § 1348 and *Wachovia Bank v. Schmidt*, 546 U.S. 303 (2006). Capital One's main office, as set forth in its articles of association, is located in McLean, Virginia. Therefore, Capital One is a Virginia citizen.

7. The matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, as set forth in Plaintiffs' *ad damnum* clause and Paragraphs 68, 71, 72, 77, 86, 87, and 96 of the Verified Complaint, which "shall be deemed to be the amount in controversy." 28 U.S.C. § 1446(c)(2).

8. A copy of the Verified Complaint filed in the Supreme Court of New York County is attached here as **Exhibit 1**.

9. A copy of the Summons served on Capital One on June 3, 2021 is attached here as **Exhibit 2**.

10. Pursuant to 28 U.S.C. § 1446(d), Defendant will promptly give written notice of this removal to Plaintiffs and file a copy of the notice with the Clerk of the Supreme Court of New York County. A copy of the written notification is attached here as **Exhibit 3**.

¹ Pursuant to Local Civil Rule 81.1, and within 21 days of removal, Plaintiffs shall file a statement identifying their members and the members' citizenships.

Dated: July 1, 2021

Respectfully submitted,
CAPITAL ONE, N.A.
By Counsel

s/ James A. Kellar

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CERTIFICATE OF SERVICE

I certify that, on July 1, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice to all counsel of record.

s/ James A. Kellar